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The Texas Pacific Railroad

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THE TEXAS PACIFIC RAILROAD.

FEBRUARY 21, 1878.—Recommitted to the Committee on the Pacific Railroad and ordered to be printed.

Mr. HOUSE, from the Committee on the Pacific Railroad, submitted the following

REPORT:

[To accompany bill H. R. 3391.]

The Committee on the Pacific Railroad, to whom were referred H. R. bills Nos. 1919, 1964, 2031, 2118, and 2573, having had the same under consideration, beg leave herewith to report back a substitute therefor.

The object of the bill which accompanies this report is to secure the cheap and speedy completion of a main trunk-line of railway on or near the 32d parallel of north latitude, from the eastern bank of the Mississippi River to San Diego, on the Pacific coast. However desirable it may be to the impoverished sections of the country more immediately interested in this transcontinental line to have the branches constructed, which various friends of the measure have hitherto advocated, the committee have thought it more in harmony with the national character of this great enterprise to make no appeal to the government for aid to such branches, believing that the wants and demands of trade, commerce, and travel will secure the construction of all branches which may be found necessary to supply those wants and answer to those demands. They therefore present a bill which asks the friendly assistance of the government in the building of only a main trunk-line, unincumbered with any branches whatever; and it is with confidence submitted that no application has ever been made to the government for assistance to any public enterprise more just and reasonable in its provisions than that contained in the bill presented by the committee. A fair and candid scrutiny of its provisions is respectfully and earnestly invoked.

The bill, in its main features, omitting details, is as follows, viz:

A POSTAL AND MILITARY ROUTE.

It provides that the road shall be maintained and operated as an open highway and as a postal and military route, at fair and reasonable rates for government service, to be adjusted by the Secretary of War and Postmaster General or Secretary of the Interior, in conjunction with the proper officers of the road.

COMBINATIONS WITH OTHER LINES.

It prohibits the company from entering into any combination, contract, or arrangement with any through transcontinental line for the

transportation of freight or passengers, under penalty of forfeiting its charter; and commissioners of the government are fully authorized to inspect the books of this and all connecting companies, with a view to ascertain or discover any infringement of this provision of the law, and for this purpose are also authorized to examine parties under oath.

CHARGES FOR FREIGHT AND PASSENGERS.

It provides that rates for through-freight and passengers on the main trunk-line and all connecting lines shall be fair and reasonable, and Congress is empowered to regulate those rates and to exercise supervision and control over the management of the road. It was thought proper that this power should be given over a road which the government, by its aid and credit, assists in building, that its own interest and that of the public might be protected against the rapacity which corporations uncontrolled and without responsibility to any one have shown themselves too prone to exercise towards the traveling public and those who ship freight over their lines.

DISCRIMINATION.

It further provides that all lines of railway now connecting or which may hereafter connect with this road shall be put on an equality as to all consigned through-business, and no unjust discrimination in charges shall be made by or against either, and that this road and all connecting lines shall be operated under such regulations and restrictions as to form one continuous line for freight and passengers. Remedies by immediate action in the United States district or circuit courts, on the part of any person aggrieved, are provided.

GUARANTEE OF INTEREST ON BONDS.

It authorizes the company to execute and deposit with the Secretary of the Treasury construction-bonds at the rate of \$20,000 per mile for 1,150 miles, and at the rate of \$35,000 per mile for 250 miles through the mountainous portion of the route, said bonds to mature in fifty years and to bear 5 per cent. interest. The government is to guarantee the payment of the interest on these bonds, but such guarantee is in no event to extend beyond the period of the maturity of the bonds. Whenever ten consecutive miles of road are completed, examined, and approved by a commission appointed by the President, who shall ascertain the actual cost of the same, the Secretary of the Treasury is authorized to issue to the company their bonds to the extent only of the cost of construction and equipment of such section, not to exceed per mile the amount named in the act.

To indemnify and save harmless the government for this guarantee, the following securities are provided:

SECURITIES FOR THE GUARANTEE.

1st. A first lien is given upon all the franchises and property on the line to be constructed, as a security for the guarantee of the interest and to provide a sinking-fund for the ultimate payment of the bonds.

2d. As a further security the government retains in its hands all that the company may earn for the transportation of government troops, stores, and supplies, and for mail and telegraphic service.

3d. The entire net-earnings of the road, if the same should be necessary, are to be paid on the guaranteed interest, and to provide for the sinking fund.

4th. All the lands hitherto granted to the company by the government are to be reconveyed to the government, the government being thus authorized to throw the same open at once to settlement, and to sell the same under its own regulations at the price established by law for government lands in railroad reservations, one-half the proceeds of the sale of said lands to be entered to the company's credit on the guaranteed interest. The reservations to the company will thus be thrown open at once to settlers, thereby preventing their being withheld from settlement by any desire on the part of the company to speculate in the lands. The company will be thus interested in promoting, by facilities afforded in the way of transportation and otherwise, a speedy sale of the lands and settlements thereon. Besides, it may be remarked that a large portion of the lands within the reservation belt are better adapted to grazing than to any other purpose. Such lands will generally be desired in large bodies; with the government and the railroad owning alternate sections, as is the case under existing laws, it will be found very difficult to dispose of the same in bodies large enough to suit purchasers; but with the title to the *whole* in the government all such difficulties and embarrassments in the sale of such lands will be obviated, and thus will the government be relieved of all trouble and delay in separating the mineral lands, which it reserves, from the railroad lands.

5th. As a further indemnity against loss by the government, the company is required to execute and deposit with the Secretary of the Treasury bonds at the rate of \$5,000 per mile for the fourteen hundred miles between Fort Worth and San Diego, to be held by the government and sold at any time to meet any default or deficiency by the company in paying the interest guaranteed by the government.

6th. As an additional security a first mortgage is given to the government on all lands granted by the State of Texas for roads constructed in said State west of Fort Worth.

The financial crisis of 1873, which prostrated so many interests and ruined so many fortunes, crippled all railroad enterprises, and has made it impossible to negotiate railroad securities in any of the money markets of the world except at a heavy if not ruinous discount. By this financial storm the Northern Pacific was swept into bankruptcy, its mortgages foreclosed, and the purchasers at the mortgage-sale are now here asking the same subsidy to complete the work that was originally granted to that line. Up to this crisis the Texas and Pacific Company was proceeding in the construction of its road with the confident belief and hope that they would be able to consummate the great work without any further appeal to the government for aid; and without any assistance from the government they have now in successful and profitable operation 444 miles of road, with its western terminus at Fort Worth. The government's guarantee of interest on the bonds of the company will enable the company to negotiate them at par, and thus to push to a speedy completion, on cheap and favorable terms, this great enterprise, which will form the cheapest, shortest, and best highway between the two oceans that has been or can be constructed on this continent, and this, too, as the committee confidently claim, without the loss of a dollar to the government.

By its legislation, Congress has declared the necessity for three trans-continental lines of railway, one to afford facilities to the northern, another to the central, and the other to the southern portions of the

Union. To the first, the Northern Pacific, a grant of about 47,000,000 of acres of land, the most of which is equal to any lands on this continent, has been given. The second, the Union Pacific, and the Central Pacific, with their branches, have received government aid in lands amounting to upward of 50,000,000 of acres, and in bonds amounting to upwards of \$64,000,000, on which the government has paid \$—— interest. The third, the Texas Pacific, has received a grant of lands estimated at about 18,000,000 acres. One of these routes has been constructed, and is in operation to-day. The munificent land-grant to the other, it is confidently asserted by its friends, will enable that company to complete its line, if the legislation which they now ask of Congress is given. The aid to the Texas Pacific falls far below the magnificent endowments bestowed by the government on either of the other two transcontinental lines, and is well known to be wholly insufficient to construct that line—so clearly insufficient that a rival corporation thinks it not an unreasonable request to ask of Congress the entire grant, with which to construct about one-third of the line which is required to be built in order to connect the Mississippi River with the Pacific. It is true, two of these lines are in the North, and the other in the South. The aid to the two Northern lines stands out in bold and striking contrast to that granted to the Southern line. No reason, in a sound public policy, can be found for the government to grant sufficient aid to accommodate one section of the country and deny it to the other. Whatever adds to the wealth and prosperity of the South, adds to the wealth and prosperity of the North and of the whole country.

To about twelve millions of people living south of the 37th parallel, the line of the Central Pacific and Union Pacific is of no practical value. These inhabitants of the South and Southwest will have to travel and send freight from five to eight hundred miles to reach the eastern terminus of the Union Pacific at Omaha, then to meet with the notoriously exorbitant rates which now burden and embarrass those more accessible to that line, and which a great monopoly, unrestrained by the salutary checks of competition and proper legislative restrictions, is too prone to exact. But if the rates over that line were all that the public could reasonably require, the remoteness of the South and Southwest would practically debar the people living in those sections from the benefits of that great highway subsidized by the government to an extent and in a manner before or since unknown to our legislation. It has grown so powerful as to defy the law of its creation and the remonstrances of an oppressed and helpless public. It has so used the magnificent endowment with which the government has enriched it that prudent men are fearful, and hesitate to risk any government aid in affording the only effectual remedy against its power and exactions, to wit, the establishment of competing lines, over which the government shall retain and exercise a supervision and control which will render impossible the abuses which the government and the public both suffer at the hands of this seemingly irresponsible monopoly. It would far exceed the proper limits of this report to go into a history of the legislation out of which grew the great monopoly represented by the Union and Central Pacific, but really controlled by and in the interest of a syndicate of capitalists composed of only a few men. But the lesson which practical wisdom should draw therefrom is, not that Congress should timidly surrender the interests of this great people because mistakes have been made, but by wise and judicious legislation to remedy those mistakes and to secure to the people and to the commercial interests of this country those connections which the general welfare demands. But all abuses

and extortions out of the question, no one at all acquainted with the wants of our people and the demands of our increasing commerce can fail to see that it is impossible for a single line of railway to answer the purposes of trade and travel. Our trade with India, China, Japan, and Australia must and will, under a judicious system of commercial intercourse, greatly expand, to say nothing of the growing demands of our home commerce, as our population increases and our resources are developed. It will be simply impossible for one line to do the business, under the most favorable conditions. And when we take into consideration the fact that for several months in the year snow-drifts seriously impede the trains on the line now in operation, its inability to meet the growing demands of foreign and domestic travel and traffic becomes more apparent.

As a simple measure of economy, the government in the management of its military, Indian, and postal affairs could well afford to expend more in the construction of the line proposed by this bill than it is asked to guarantee. The rates of transportation charged on the present Pacific connection are admitted on all sides to be high. Yet the reports of the Quartermaster-General show that the saving to the government on that line, in railroad over the former mode of transportation by wagons, has been 75 per cent., and that for the two years preceding June 30, 1874, this saving amounted to about \$2,000,000 per annum. Now, when the fact is taken into account that between thirty and forty military posts, and eleven regiments of United States soldiers, nearly half the entire Army, would draw their supplies from the Texas-Pacific Railway; and the further fact that during the years 1865-'66-'67 the government actually paid \$16,627,922.47, or more than five and a half millions annually, for maintaining a military force in Arizona and New Mexico—not including the expense of Indian agencies, supplies, or transportation of mails and stores—the conclusion is irresistible and unanswerable that the government would save more than the maximum liability to be assumed under the provisions of this bill. If this be true—and the committee submit that it cannot be controverted successfully—the argument against the enterprise, based on the idea that it is a raid upon the Treasury, disappears.

The building of the proposed road would in all probability, at no very distant day, change the heavy expense of a military establishment in Western Texas, New Mexico, and Arizona into absolute revenue from a prosperous and wealth-creating people. Late discoveries and explorations in these Territories indicate an amount of mineral wealth equal to that of any section in the Western country, treasures that would be rapidly developed through the presence and agency of a railroad. The proximity of this line of railway to the States of Old Mexico should not be overlooked. Our manufacturers of woolen and cotton goods, machinery, agricultural implements, &c., ought naturally to supply the Mexican population of between seven and eight millions with those articles, and would, before a great while, do so, if this line of road should be constructed. The new markets that would thus be opened up to the enterprise and energy of the American people would prove a most prolific source of wealth. At present, English merchants from the coast supply the people of Mexico and enjoy a monopoly of the trade. The influence which this great line of railway would exert in promoting peaceful relations with our sister republic, in solving the Indian question, and the protection it would afford to our Mexican frontier and the Pacific coast in case of a foreign war, can hardly be overestimated.

!!It is now apparent that, with adequate facilities for transportation, the American continent must become the great highway between the countries of Europe and China and Japan. The distance between San Diego, on the Pacific coast, and the Southern ports of the Atlantic, is nearly one thousand miles less than the distance between San Francisco and New York on existing lines. But for our unfortunate civil disturbances, there can be little doubt that the first transcontinental line of railway constructed would have been on or near the 32d parallel. This was the line on which public opinion had settled as the one to be constructed. It was the shortest route between the two oceans; there was less elevation to be overcome; the material for construction was of easy access, and abundant; the climate was far more favorable than on any other route, being free from the obstructions of snow and ice which must always form serious obstacles on more Northern lines. The debates in Congress on the "Gadsden purchase," by which the United States, in 1853, acquired from Mexico 100,000 square miles of territory, at the large price of \$10,000,000, show that one of the main considerations that induced the government to make that purchase was the fact that through this territory the cheapest and most practicable route for a great transcontinental line of railway could be obtained. The loss of this great highway, which would have opened to the whole Mississippi Valley the trade of India, China, Japan, Australia, and the markets of Mexico, may be set down to-day as not the least item of loss which the South and Southwest, and indeed the whole country, sustained by the war. The great superiority of this route over all other transcontinental lines of railway has, with the return of peace, again attracted public attention to it. Your committee, surveying the demands of commerce, foreign and domestic, at no distant day, and the superior advantages of this route, can come to no other conclusion than that its construction is only a question of time. *It must and will be built.* There never was a more opportune time than the present for Congress to lend the needed assistance to push it to a speedy completion. The practical influence of such an agency in reviving industry and stimulating settlement, in a time of such great and general depression as the present, should not be overlooked or underestimated. It cannot be denied that the vigorous prosecution of so great a national work would do much to relieve the labor and financial famine of the country by giving employment to multitudes and putting large amounts of idle capital into active circulation.

But your committee must not fail to call more special attention to one of the securities provided to save the government from loss. The entire net earnings of the road, as has been seen, are to be applied, if necessary, to the payment of the guaranteed interest. Notwithstanding the great cost of the line on the 42d parallel, and its threatened or actual obstruction several months in the year, its net earnings for eight years ending June 30, 1877, were in round numbers \$87,000,000, the greater portion which was derived from its local traffic. The amount per mile guaranteed by the government under this bill is less than one-third the amount of net earnings per mile on the Union Pacific line. The whole of the land-grant, as has been seen, given by former legislation to this road, is reconveyed to the government, and one-half the proceeds of the sale of said lands is to be applied to the payment of the guaranteed interest. So it will be observed that the guarantee of the government is not asked in addition to the land-grant.

Your committee have examined the proposition of the Southern Pacific Company to take the land-grant given to the Texas Pacific, and with-

out further aid to construct a road from Fort Yuma to El Paso, on the Rio Grande. This proposition assumes that the Texas Pacific has forfeited its land-grant by a failure to construct the number of miles per annum required to be built. It is not pretended, and indeed cannot be, that the ten years given by the act of May 2, 1872, for the completion of the entire road, have elapsed. This time will not expire until May, 1882. To say the least of it, it is a matter of great doubt whether Congress would have the legal right to declare the grant forfeited so long in anticipation of the expiration of the time given for the completion of the entire line. It would certainly be a very harsh exercise of that power, if Congress has it, to thus deprive a company of the aid given which had struggled through a great financial crisis, and in good faith had made every effort in its power to complete the work and all its sections as prescribed in the law. The proposition to declare this grant forfeited comes from the Southern Pacific, a railroad company chartered by the State of California. Your committee have no doubt that the Southern Pacific is controlled by the same parties who control the Central Pacific. Sixteen persons own the \$36,763,900 of reported paid-up capital of the Southern Pacific. All these persons are shareholders in the Central Pacific, except four. Four of the seven (a majority) of the directors of the Southern Pacific are shareholders of the Central Pacific. Nearly the whole line of the Southern Pacific is operated by the Central Pacific. Your committee, therefore, regard the proposition of the Southern Pacific, as evidenced by the bill introduced and referred to this committee, as an effort on the part of the Central Pacific to defeat the building of a transcontinental railway which will compete with that line. The idea that the Central Pacific should desire to build a line to compete with the one they have already in operation is one that cannot be seriously entertained until we are prepared to accept the proposition that shrewd business men will work adversely to their own interest. Your committee would regard the acceptance by Congress of the proposition of the Southern Pacific as the death-blow to a competing transcontinental railway on the line of the 32d parallel. To give the Central Pacific control of the western end of the Texas Pacific, with terminal facilities on the Pacific coast, that mammoth company now owning every other avenue to the Pacific coast within the limits of the State of California, would be to defeat the main object of the whole enterprise, to wit, the building of a great competing line to the Pacific, under the supervision and control of the government. The proposition of the Southern Pacific, it must be observed, while it proposes to take the whole land-grant, does not embrace the building of the road farther east than the Rio Grande. From that point, if in good faith they mean ever to reach that point, they may seek connections to the northeast, with the Atchison, Topeka and Santa Fé Road, or southeast, with the Gulf of Mexico. It does not propose to build to the Mississippi River, or to meet any line now built to that river connecting with roads running to the Southern Atlantic ports. From El Paso, the eastern terminus of the line which the Southern Pacific proposes to build with the land-grant which Congress is asked to take from the Texas Pacific, and Fort Worth, the present western terminus of the Texas Pacific, is a distance of some six hundred miles. From El Paso to the Mississippi River is nearly one thousand miles. Should the intervening gaps between El Paso and the Mississippi be filled up by private enterprise the question would arise as to the power of Congress to control the private interests in the corporations owning the intermediate lines, and thus the salutary power of Congress over a great

competing transcontinental line might be frustrated or rendered of no practical avail. It would also be a question whether Congress would have any right to impress upon the line or lines east of El Paso, constructed with private capital, the character of a military and postal route, with preferences to the government in their use.

By its charter the Texas Pacific is authorized and empowered to construct a continuous railroad from Marshall, Texas, to San Diego. The termini of the road are thus fixed positively; the character of the road is also fixed, to wit, a continuous line between its established termini, to be used, controlled, and operated by one company. The amended charter, after providing that a certain number of miles shall be built each year, the whole to be completed in ten years, proceeds in the words following: "And upon failure to so complete it, Congress may adopt such measures as it may deem necessary and proper to secure its speedy completion." Now, under this clause it is claimed that Congress not only has the right to take away from the Texas Pacific its land-grant and give it to another company, but also to allow said other company to change the character of the road as one continuous line to be operated by one company between the termini named, and to change the termini themselves. Under the quoted clause no such right can be found. The power is there given, not to build another road of a different character and with different termini, not to have different connecting lines under the control of different companies, but to take necessary and proper steps to secure the speedy building of that identical road, with its eastern terminus at Marshall and its western at San Diego, the whole to be a continuous line operated by one company. The proposition of the Southern Pacific, as embodied in the bill referred to your committee, does not contemplate the construction of a road to San Diego and reaching the fine harbor there, at all, nor does it contemplate reaching Marshall, Texas, unless the Texas Pacific, or some other company or companies, by means of private capital, should build a road westward to El Paso. Your committee more than doubt the legal right of Congress to do what is asked by the Southern Pacific, and when the proposition of said company is offered as a means of obtaining a great competing transcontinental line on or near the 32d parallel, your committee believe that the acceptance of that offer would most effectually defeat the construction of any such line.

Another question which your committee would notice is the constitutionality of the measure, on which they do not propose to incumber this report with a lengthy argument. Whatever diversity of opinion there may have been in the early period of our history as to the constitutional power of Congress over the subject of government aid to internal improvements, no one now disputes that the government has a right to build military and post roads. The fathers of the republic, and her most eminent statesmen, representing different theories of government and adverse political opinions, have all conceded this power. To hold that the government cannot combine with private capital, retaining its general control over the work when completed, and to call to its aid individual enterprise and energy in securing a great national highway deemed essential to its interest and the security and prosperity of the country, would be to deny to the government the employment of what it might conceive to be the cheapest, most expeditious, and most efficacious means of accomplishing an object clearly and confessedly within the limits of its constitutional power. Your committee think that the Supreme Court of the United States, in a recent decision, in the case

of the Union Pacific Railway Company *vs.* The United States, has dispelled whatever doubt may have lingered upon this subject.

In reference to the eastern extension to the Mississippi River, the bill provides that, in order to do equal and exact justice as far as may be to all sections of the country to be more immediately affected by the road, it shall be the duty of the President of the United States, within sixty days after the passage of the act, to appoint five commissioners, three of whom shall be the three engineer officers of the United States Army highest in rank, and two of whom shall be ———, and all of whom shall be wholly free from all personal or corporate interest in any of the proposed routes between Texas and the Mississippi River, and in any railroad company from any point on or connecting with the Mississippi River and the Atlantic or Gulf coast. It is made the duty of said commissioners to examine the various proposed routes between the Mississippi River and the present constructed road of the Texas Pacific Railway Company, and, after considering all questions of cost, distance, and transportation, and having in view also a good and eligible connection with the Atlantic seaboard, and the promotion of our foreign as well as domestic trade and commerce, to report where, in their judgment, the proposed addition eastward of the line of the Texas Pacific shall connect with the present line, and where it shall connect with the Mississippi River, said connection with the Mississippi River to be at a point on the same not farther north than the city of Memphis, Tenn.; and their report, if approved by the President, shall be final and conclusive in fixing the location of the eastern extension to the Mississippi River. The eastern terminus is to be on the eastern bank of the Mississippi River, and the river is to be crossed either by a bridge, or on proper boats. No guarantee of interest whatever is given on the eastern extension of the line to the Mississippi, but the company is required to construct, or purchase lines already constructed, at the rate of not less than fifty miles per annum, after the location of the line is determined upon, under the penalty of a forfeiture of all right to the government guarantee of interest on bonds, for so much of the line between Fort Worth and San Diego as may remain unconstructed at the time of such default. In justice to all portions of that section of the country through or near which this line is to pass, or which are deeply interested in connections with the Atlantic seaboard, your committee have deemed it best to leave the point of crossing the Mississippi River an open question, to be settled as above indicated, only providing that said crossing shall not be fixed farther north than Memphis, Tenn., making it emphatically a Southern line, and at the same time national in character.

In conclusion, the committee deem it not inappropriate to advert to the fact that there is a large measure of justice due to the South and Southwest. Three States of the South, Virginia, North Carolina, and Georgia, gave to the United States 180,000,000 of acres of land which now comprise the great States of Ohio, Indiana, Illinois, Kentucky, Tennessee, Alabama, and Mississippi. When we compare what the donors of this imperial domain and their Southern sisters have received from the sale of those lands and from government bounty with what has been so lavishly bestowed on other sections of the country, we cannot bring ourselves to believe that this inequality will be continued and perpetuated by giving to the Northern sections of the country two great highways to the Pacific, and denying to the South the moderate and reasonable aid asked in this bill to construct a line which will give her people the benefits of a like connection.

The bill recommended by the committee is the same, with some amendments, as that introduced by the Hon. A. H. Stephens, of Georgia.

In reference to the other bills referred to the committee, providing for the building of this line, the committee deem it sufficient to say that they have given them all due consideration, and present this bill in lieu of all others upon the subject.

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TEXAS AND PACIFIC RAILROAD.

FEBRUARY 21, 1878.—Recommitted to the Committee on the Pacific Railroads and ordered to be printed.

Mr. BLAIR, from the Committee on the Pacific Railroads, submitted the following as the views of the minority of the committee :

VIEWS OF THE MINORITY.

THE TEXAS AND PACIFIC RAILROAD.

A minority of the Committee on Pacific Railroads, to whom were referred House bills H. R. 1919, H. R. 1964, H. R. 2031, H. R. 2118, and H. R. 2573, submit their views through Mr. Blair:

We are unable to concur in the views of the majority of the committee, but desire the adoption by Congress of such measures as will secure the early construction of a transcontinental railroad for the special use and development of the Southern and Southwestern States and Territories. We believe that this important object can be accomplished without subsidy from the government, and submit the following views and the accompanying bill for the consideration of the House.

NECESSITY FOR THE CONSTRUCTION OF A SOUTHERN ROAD.

Although the present necessity for the construction of either a northern or southern Pacific railroad is less imperative than was the emergency which compelled the government in time of war to secure at once territorial integrity and material prosperity by large appropriations for the construction of a middle line of interoceanic communication, yet the original idea of three main transcontinental railroad routes for the accommodation of the whole country, so far separated as to be practically independent of each other, should be steadily kept in view by Congress until it is realized.

Numerous cross-lines and feeders will ultimately unite these main lines, and other roads on intervening parallels will girdle the continent; but this generation will do well if it shall complete these great prophetic lines, opening to settlement the Western Territories, and furnishing the basis of a vast prospective development of wealth and population.

No single line can transport the commerce now waiting for accommodation, and the three together will, in less than a quarter of a century, be insufficient to perform the land-carrying trade of the country between the oceans.

This great development, only partially anticipated by the projectors of these roads, Congress is now called upon to promote by appropriate legislation.

THE PRESENT CONDITION OF THE SOUTHERN LINE.

The Texas and Pacific Railway Company, a corporation of the State of Texas, in the year 1871 was authorized by Congress to construct its road and telegraph from Marshall, in Eastern Texas, along and near the thirty-second parallel of north latitude, through that State and the Territories of New Mexico and Arizona to San Diego, a small city on the Pacific coast, on a bay of the same name, supposed to be well adapted to commercial purposes, and having a population of four or five thousand people. The distance from Marshall to San Diego is estimated at 1,574 miles by the authorities of the Texas and Pacific Company, while those of the Southern Pacific Company believe it to be about one hundred miles greater.

The seventeenth section of the charter of the Texas and Pacific Railroad Company, by Congress, approved March 3, 1871, enacted—

That the said Texas Pacific Railroad Company shall commence the construction of its road simultaneously at San Diego, in the State of California, and from a point at or near Marshall Tex., as hereinbefore described, and so prosecute the same as to have at least fifty consecutive miles of railroad from each of said points "complete and in running order" in two years after the passage of this act; and so continue to construct each year thereafter a sufficient number of miles to secure the completion of the whole line from the aforesaid point on the eastern boundary of the State of Texas to the Bay of San Diego, in the State of California, as aforesaid, within ten years after the passage of this act; and upon failure to so complete it, Congress may adopt such measures as it may deem necessary and proper to secure its speedy completion.

Another act was procured by the corporation, approved May 2, 1872, which, in the fifth section, provided as follows:

That the said Texas and Pacific Railway Company shall commence the construction of its road at or near Marshall, Tex., and proceed with its construction under the original act and this supplement, or in pursuance of the authority derived from any consolidation as aforesaid, westerly from a point near Marshall, and toward San Diego, in the State of California, on the line authorized by the original act, and so prosecute the same as to have at least one hundred consecutive miles of railroad from said point complete and in running order within two years after the passage of this act; and so continue to construct, each year thereafter, a sufficient number of miles not less than one hundred, to secure the completion of the whole line, from the aforesaid point on the eastern boundary of the State of Texas to the bay of San Diego, in the State of California, as aforesaid, within ten years after the passage of this act: *Provided, however,* That the said company shall commence the construction of said road from San Diego eastward within one year from the passage of this act, and construct not less than ten miles before the expiration of the second year, and after the second year not less than twenty-five miles per annum in continuous line thereafter, between San Diego and the Colorado River, until the junction is formed with the line from the east at the latter point, or east thereof, and upon failure so to complete it, Congress may adopt such measures as it may deem necessary and proper to secure its speedy completion, and it shall also be lawful for said company to commence and prosecute the construction of its line from any other point or points on its line; but nothing in this act contained shall be so construed as to authorize the grant of any additional lands or subsidy of any nature or kind whatsoever on the part of the Government of the United States.

Failing to meet these provisions the Texas and Pacific Company has obtained by construction and purchase, and now has in operation, 443 miles of road, which inclose a parallelogram in Northeastern Texas, having a base of 183 miles extending from Marshall to Fort Worth, now the western terminus of the road, which only is a part of the trunk line. The remainder of the 443 miles is so located as to secure the more valuable lands granted by the State of Texas, probably because the pecuniary embarrassments of the company were such that its credit was based chiefly upon the granted lands. There is thus remaining of the trunk line between Fort Worth and San Diego a distance of 1,491 miles, upon which nothing has been done.

Of the ten years allowed by the charter within which to complete this great work, only four remain, and a considerable portion of one of these must elapse before the enactment of the desired legislation is possible. Six tenths of the time has been consumed in the construction of less than one-eighth of the trunk line, and that at the easterly terminus, in close connection with the great middle system of roads and the central belt of States, rather than with the southern system of roads and the Southern States.

This corporation has fallen thus far short of the performance of its undertaking, although it received from the State of Texas the munificent grant of the alternate sections of land for forty miles in width along each side of its line, or eighty miles in all, through the State of Texas, and the same from the United States through the Territories and in California, contingent upon its compliance with the conditions of the grant.

THE DESIRED SUBSIDY.

The credit of the Texas and Pacific Company was seriously impaired before the panic of 1873, and under its influence has still further declined. It admits its pecuniary inability, and assigns that as a reason for its failure to comply with the conditions imposed upon it by law.

In 1875 it applied to Congress for a subsidy of over \$60,000,000, in addition to its land-grant of 22,528,000 acres in Texas, and 18,000,000 in the Territories, being a money subsidy of twice the probable cost of building and equipping its road.

The application failed. It now changes the form rather than the substance of its request and asks for a guarantee of interest on \$25,000 a mile for the easier, and \$40,000 for the heavier portions of the road, amounting in all to \$38,500,000, at 5 per cent. annually, for fifty years.

The bonds of the government bearing $4\frac{1}{2}$ per cent. interest have recently been sold at par in refunding the national debt. If the public faith is kept and its credit unimpaired the time is not remote when the government will be able to effect loans at the rates of 3 and $3\frac{1}{2}$ per cent., as now paid by England. The difference between the interest on these 5 per cent. Texas and Pacific bonds for fifty years and the ordinary rates which the government will have to pay on the same amount for the same time, if invested as it might be by the government for the payment of its own debt, would amount to much more than the cost of the road, so that the government would be far better off to build the road and give it to the Texas and Pacific Company outright than to guarantee the interest on its 5 per cent. fifty-year bonds, according to its request.

Assume that the average interest of government loans for the next fifty years will be 4 per cent., and we have an annual loss to the government in the excess paid to these bond-holders, of 1 per cent. on \$38,500,000, or \$385,000; which, invested in a sinking-fund, would amount to \$140,000,000 at the maturity of the bonds, or three and one-half times the principal. Beside all this, there is no doubt that the whole road can be built and equipped for less than \$20,000, probably for not more than \$15,000 per mile. Assuming it to cost \$20,000 per mile, and the aggregate will be (estimating the distance at nearly one hundred miles more than the Texas and Pacific authorities represent it) \$29,420,000, leaving an excess of \$9,080,000 to be taken from the principal for the benefit of those who manipulate the bonds at the start, and who do not propose to risk a dollar of their own in the enterprise.

True, they say that no more bonds shall be issued than are necessary

to complete and equip the road ; but no one can doubt that a necessity will be found for the full amount named in the bill.

We have said nothing about the returns by way of government service in its various forms because that source of benefit is just as available from a road built with private as with public capital ; and besides, complications in matters of account always arise between the government and such corporations, that surpass the understanding of those who represent the nation.

The total amount of interest guaranteed by the government would, if paid into a sinking fund, amount to more than \$700,000,000 in fifty years, and we are called upon to guarantee the payment of this sum in addition to the proceeds of the land-grant in order to enable the Texas and Pacific Company to complete its road.

It is unnecessary to recite further the details of the bill, or to repeat the arguments bearing upon the general question of subsidies. This matter is discussed in the report of the minority of the subcommittee by Mr. Luttrell.

We are opposed to all pecuniary subsidies and guarantees by the government, in whatever form, for the benefit of railroads at this time, however desirable their construction. In time of peace, private capital seeking profitable investment will generally promote commercial development quite as fast as is consistent with safety and permanent prosperity. If the men in charge of a meritorious enterprise command the confidence of capitalists or even the too-easily-won trust of the middle classes, there is no need of calling upon the nation for subsidies or guarantees.

As the Texas and Pacific Company is controlled by men of great experience in affairs, who have for many years been prominent in the development of some portions of our railroad system, we are forced to the conclusion that this enterprise under their management is not one which commands the confidence of astute business men who have to invest in desirable securities. It is this want of capital and public confidence which renders it impossible for the Texas and Pacific Company to build the road along the 32d parallel. Were it a corporation with capital and credit, or were the project one commanding the confidence of business men under this management, the road might be built by the Texas and Pacific Company. But, in our belief, unless the government assumes the burden of the undertaking, while its management is left to the Texas and Pacific Company, there would be no possibility of the construction of the road even if the company should profess its purpose to accomplish it.

THE SOUTHERN PACIFIC RAILROAD.

The Southern Pacific Railroad Company is a corporation of the State of California. Its original charter required the yearly construction of certain definite portions of its road, which condition, with others therein imposed, have been substantially complied with. The 23d section of the act of Congress of 1871, above cited, is as follows :

That, for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July twenty-seven, eighteen hundred and sixty-six.

This corporation has constructed its road to Fort Yuma, on the easterly bank of the Colorado River, in the southwesterly corner of the Territory of Arizona, which it claims to be the authorized point of connection with the Texas and Pacific road, a distance of about 720 miles. Its track has been laid through and over extraordinary natural obstacles at the expense of about \$60,000,000, and the 350 miles of its southern portion passes through a desert, and for 164 miles nearest the Colorado without an oasis. This road, built to preserve the charter, is of little value except for its anticipated connections with the Southern States, from which, owing to the failure of the Texas and Pacific Company to comply with the requisitions of law, it is now more than 1,200 miles distant.

It is true the road would do a limited business with Arizona should it be built no further. But the population of that Territory is only about 35,000, and of these not a large proportion would do business with it, because of the inconvenient point of contact and of the imperfect communication via the Colorado River.

The road is already *there*, with its millions of money invested over a sandy waste, upon the good faith of the government that the Texas and Pacific Road should be constructed so as to meet it at the Colorado River, or, in the event of the failure of that corporation so to do, that Congress should take such measures as should enable it to connect with the Southern States of the Union.

The Southern Pacific Railroad Company, therefore, will suffer great loss unless it receives immediate relief by such legislation as will secure the early completion of the road along the thirty-second parallel. True, it might prolong its existence by high tariffs levied upon the scanty commerce of that sparse population, which, if now burdensome to the people, must remain so until eastern communications, and consequent increasing traffic, shall result in a reduction consistent with the continued existence of the corporation itself, and with some return upon the enormous sums invested. An increase of railroad facilities and connections is the only means of relieving the people of those Territories from the high rates of transportation incident to their isolated condition and the development of the vast mineral wealth of those great Territories, larger and richer in natural resources than many powerful kingdoms of the world.

POSITION OF THE SOUTHERN PACIFIC ROAD.

The Southern Pacific Railroad, by force of the absolute necessity of its securing eastern connections as soon as possible, in order to preserve its capital, is the only party which has both the power and the disposition to build this road.

Early in the sessions of this Congress a bill was introduced by Mr. Money, of Mississippi, proposing in substance to declare the franchise and land-grant of the Texas and Pacific Company west of the Rio Grande River (the boundary between Texas and New Mexico) to be forfeited, and that the Southern Pacific Company be subrogated to the grants originally made to the Texas and Pacific Company west of said river. By the terms of this bill the Southern Pacific was to complete the road to El Paso, on the Rio Grande, six hundred miles easterly from its present terminus, which is at Fort Yuma, in six years; and if, at the end of that time, no other railroad should have been constructed westerly to connect the Southern States with its line at El Paso, then, with the consent of the State of Texas, the Southern Pacific Company might push

easterly until the connection indispensable to this company could be made with the Mississippi Valley.

On the contrary, if the Texas and Pacific Company or any other road building westerly, should arrive sooner at the Rio Grande than the Southern Pacific Company building easterly, such road could build westerly through the Territories till the approaching lines of the two corporations should meet. This proposal was calculated to excite competition similar to that which drove the existing transcontinental line to completion before half the time allowed by Congress for that purpose had expired. In this bill were numerous and well-guarded provisions to secure compliance with the terms and conditions which might be imposed by Congress, including government regulation of tariffs and proper connections and running arrangements with other roads, prorating with the eastern lines, and other commendable features unusual but necessary in the charters of railroads.

The passage of this bill was advocated by the Southern Pacific Company before the committee, asking of the government no other aid but the land-grant through the Territories.

The Southern Pacific Company interposed no opposition to the guarantee asked by the Texas and Pacific east of the Rio Grande; but contemplating the contingency of the denial of guarantee of bonds to the Texas and Pacific Company, and the consequent total collapse of its undertaking, strongly insisted that justice required that they should not be held in check awaiting the result of continued applications by the Texas and Pacific Company for the money or credit of the nation with which to perform what the Southern Pacific was ready to do immediately for the land-grant alone.

To this bill the Texas and Pacific Company objected. The only argument entitled to weight, in our opinion, was that the Southern Pacific, connecting with the ocean at San Francisco, and having intimate business relations with the Central Pacific Railroad, might enter into combinations with that corporation against the public interest, and that the advantages of competition and of an ocean connection at San Diego would then be lost.

COMPETITION AND COMBINATION.

We believe that any competition between rival parallel lines of railroad for the same business, which results in a loss to the companies, is sure to end in one of two ways, either in a combination by which the public will lose far more than it has ever gained from competition, or, on the other hand, in the ruinous cutting of rates persisted in until the weaker corporation is ruined, and the public is left to the rapacity of the survivor. There is no real protection to the public but in the enforcement of the law of the land. Competition which takes from corporations just compensation is quite as ruinous as combination which gives them too much.

No one can believe that the Texas and Pacific Company would, after constructing its line to the Pacific Ocean, long compete with any rival to its own loss, or even so as to produce any reduction of rates below the maximum to which the public would submit; or that it would fail to repair its losses or increase its gains, whenever an opportunity might offer. We repeat that nothing but the law, and the enforcement of the law by the government, can protect the public against the love of gain which is inherent in human nature.

This truth is recognized by the bill of the Texas and Pacific Company

reported by the majority of the committee, and stringent provisions are therein made to hold that corporation within the bounds of justice and law; very unusual safeguards being provided for, *in consideration* of the fact that the government itself is really required by the bill to furnish the means necessary to build the road and give to the projectors an additional bonus of \$10,000,000. Restrictions and conditions in a charter can be enforced by the machinery of the law against one corporation as well as another.

RELATIONS OF THE SOUTHERN, CENTRAL, AND TEXAS PACIFIC ROADS
TO EACH OTHER AND TO THE SOUTHERN STATES.

Assuming that the Southern Pacific is controlled by the Central Pacific (which is denied), there is the strongest reason to suppose that this circumstance would operate rather to the benefit than to the injury of the South and Southwest. The whole length of the Central Pacific is about 800 miles. The Southern Pacific from San Francisco to the Colorado is more than 700 miles. Add to this the proposed extension of 600 miles, and the total is over 1,300 miles, and we believe it probable that the Southern Pacific will extend its line easterly across Texas unless the desired subsidy should enable the Texas Pacific Company to form the connection at El Paso.

Therefore, if San Francisco would be the point to which all business would converge—the focus of inland and oceanic communication on the Pacific shores, the Southern Pacific branch offers to this imagined central and southern combination the earnings of at least 1,300 miles of road against 800 on the Central Pacific. Which branch, then, will this supposed combination most naturally employ? Impelled by its own interests, its own investments and connections, what section of the country will it seek to develop? Is it not apparent that, whatever may have been its previous purposes, by virtue of the proposed extension of its line it is at once converted into essentially a southern road? It is no reply to this to say that owning the westerly ends of the middle and southern routes it will blockade both until its exactions are complied with, for the bill we recommend expressly reserves and confers upon Congress far greater powers of control over the Southern Pacific than are contained in the bill reported by the majority, and so long as the people are so disposed they can protect themselves by the same methods which must be resorted to in order to secure performance of their obligations by the Texas and Pacific Company, and with no greater powers of resistance on the part of the one than the other, except that the restrictions in the organic law of the Southern Pacific are the more stringent and explicit. Again, for what business will this supposed competition arise? The southern road should be built to benefit the Southern States. Do these States expect that the Central and Union Pacific can or ever will compete with a southern road for the commerce of the Southern States? The middle and southern line might indeed compete for business in the latitude of New York and Philadelphia; but the Pennsylvania Central Railroad and its six thousand miles of trunk and western connections does not run through the South Atlantic, the Gulf, and Southwestern States any more than does the Union Pacific and its easterly extensions via Chicago to New York. Is not this monster (speaking after the manner of the majority) the *more* dangerous rather because while the nearer to them it is yet not of them; and if they enlarge its power, are they not the surer to become its victims and to pour forever their tribute into the lap of the

Middle Atlantic States? Will not the southern business, if it has a fair chance, go over the southern route, no matter who builds it or who runs it? Can that business ever be forced northerly to Omaha? Coming from the occident, how can transportation climb the Sierras via that city to be distributed in Georgia and Florida and South Carolina when there is communication along the thirty-second parallel? How, then, can there ever be any competition by the Union and Central Pacific for the business of these Southern States?

There might be competition which would inure to the benefit of Philadelphia and New York, but just as soon as the middle and southern portions of the country are reached, the Pennsylvania Central, owning and running this whole southern route, will control all the commerce of the South along the thirty-second parallel, from the Atlantic to the Pacific. Is not the fact apparent that one owner controlling a through line, the easterly half of which runs through the middle and border States, and the westerly half of which, curving southerly, holds the communications of the South Atlantic and Gulf States, of the Lower Mississippi Valley, of Texas, and the far Southwest, is infinitely more dangerous to the country, and to the South especially, which must use southern routes in any event, than *two* owners, one in California and one in Philadelphia, who are sufficiently hostile to hold each other in check under the superintendence of the law? But the bill of the majority simply locates another Omaha on the Lower Mississippi, and demands that the Texas and Pacific Company shall thus be to the South all they charge that the Union and the Central Pacific combined are to the country.

We talk of the *outlets* to the Pacific; but we must remember that the main channels of business are controlled by their ownership and location on the Atlantic as well as the Pacific, and the time is not far distant when the surpassing development of our western and southwestern possessions will require and secure, not one but many tracks, which may be laid along lines already surveyed or may debouch through new passes, which the surveyor is sure to find and the engineer to subdue, upon our western shores.

This certainty of the future is provided for by the final section of our bill.

As bearing upon the alleged desire of the Southern and Central Pacific Railroads to monopolize the commercial outlets of the Pacific coast, it should be stated that it was shown before the committee that in 1873, when both those corporations were under substantially the same control as now, the Southern Pacific sold its entire franchise and property to Col. Thomas A. Scott, of Philadelphia, in the interest of this same Texas and Pacific Company, including the whole route to San Francisco; and his failure to keep the control alone prevented the consolidation of that corporation with the line to San Francisco. After this it seems strange that the Southern Pacific should expend so many millions in building its road through a desert merely to prevent the construction of the Texas and Pacific lines. One would imagine that the expenditure of a tithe of that money would have purchased the Texas and Pacific franchise, and exploded the whole project of a southern road along the thirty-second parallel for years.

It is also worthy of notice that in the last Congress the Texas and Pacific Company entered into an arrangement with the Southern Pacific by which the former was to build and own easterly and the latter to build and own westerly, meeting at the Rio Grande. Is there, then,

either sense or sincerity in this praise of competition and denunciation of combination—all for the public good?

The truth is that a subsidy is of more consequence than the railroad to those who ask for it, while to those who will have to pay for both, the railroad is the principal thing.

THE FORFEITURE OF LAND-GRANTS IN THE TERRITORIES.

Upon the question of the power of Congress to declare the rights of the Texas and Pacific Company derived from the United States, west of the Rio Grande, to be forfeited by reason of its default and breach of the conditions upon which they were granted, and revested in the nation, it is contended by that corporation, that without its consent, no such action or measures to secure the completion of the road can be taken until the expiration of the full ten years allowed for the construction of the entire road. We cannot discuss the legal question, if there is one, in this report, but it appears to us that a simple perusal of the law above cited in view of the facts stated, which are not denied, must be a sufficient reply to this position. It cannot be that Congress has given any corporation the right to barricade this great enterprise for ten years at will. Least of all can it be that such wrong is perpetrated in a charter, which, by its own terms, may in any event be altered, amended, and repealed whenever the public good requires.

That charter was given to secure the completion of the road, not to prevent it, and any construction of its language which defeats its purpose, is legally false.

PROVISIONS OF THE MINORITY BILL.

Influenced by these considerations, and others which cannot now be stated with desirable brevity, we beg leave to report the accompanying bill, as a substitute for the bill reported by the majority, and recommend its passage.

It is proper to say that the bill is substantially the same as that introduced by Mr. Blair, on the 25th day of February, being House bill No. 3526, with an amendment extending the time of the Texas and Pacific Company two years, making six years within which to build its road to El Paso, provided it is not sooner met in the State of Texas by the Southern Pacific, building easterly. See the second section of the bill.

Its provisions may be epitomized as follows:

After reciting the failure of the Texas and Pacific Company to perform the conditions of its organic act, and amendments thereto, and alleging in section 1 that the occasion has arisen in which Congress may and should assert the power expressly reserved, as above stated, to adopt such measures as it might deem necessary and proper to secure the speedy completion of said railroad, in section 2 the bill provides that the Southern Pacific Railroad may extend its line of railroad and telegraph from its present terminus to the easterly bank of the Rio Grande, there to connect with the constructed road of the Texas Pacific or any other road in the State of Texas which shall have arrived at that point, and that upon the passage of the act all the rights formerly conferred upon the Texas and Pacific Company westerly of the Rio Grande, shall be deemed to have lapsed and terminated as to said company and to be revested in the United States for the purposes of this act. The

bill does not undertake to interfere with the rights, if any, acquired by the Texas and Pacific Company from the State of California.

Section 3 confers the right of way through the Territories in common form, two hundred feet wide on either side, with an aggregate amount of land, not exceeding one section in five, for depots and other necessary uses of the road, and that the United States shall extinguish any Indian titles, as usual in such grants. Probably, however, there are none which would be interfered with.

Section 4 provides that the Southern Pacific Railroad shall commence its road within one year after the passage of the act, and within one year thereafter shall complete one hundred miles, and not less than fifty miles yearly, and shall complete the whole to the Rio Grande, *and shall also extend its line to San Diego* (within ninety miles of which city it is now in operation, and is being pushed along some twenty-five miles annually), within six years after the passage of this act, being an average of one hundred and fifteen miles per year.

Upon failure to complete *each year*, as in this section provided, Congress may *immediately* take any measures it shall deem necessary for the completion of the road; thus enabling Congress, if it should become desirable, to restore to the Texas and Pacific Company all its old privileges long before that company will get to the Rio Grande, or take any other measures necessary to secure its completion forthwith. There would be no room for the unreasonable and obstructive construction which the Texas and Pacific Company sets up under its own charter, to delay the building of the road until the required money can be extorted from the public Treasury.

If no road built westerly through Texas has reached El Paso in six years, then, the State of Texas consenting, the Southern Pacific may build easterly and connect with the Texas Pacific, or some other company; and on the other hand if the Southern Pacific fails to reach the Rio Grande in six years, the Texas and Pacific Company, or any other company, may build through the Territories to connect with the Southern Pacific, and have for the part of its road so constructed the rights herein given to that corporation.

Sections 5, 6, and 8 are too long to state in this report, but we respectfully ask close attention to the cautious and onerous nature of their conditions and safeguards for the protection of the public and of the private citizen. All the provisions of this nature found in the bill of Mr. Money, which was advocated by the Southern Pacific Railroad before the committee, are here preserved; *also* every provision of this nature for governmental supervision and control of fares and freights, to secure an open highway so far as practicable, and a competing line along the thirty-second parallel, the first use of the road to the government for postal and military purposes, connections, pro rating, prevention of combinations, &c., &c., which are proposed in the bill of the Texas Pacific Company, *in consideration of subsidy and land grant*, are, in the very language employed in that bill, incorporated into this, with other provisions deemed by us essential to the public good; and this without any grant to the company but the naked right of way above stated.

Section 7 saves all rights, if any, of the Texas Pacific in California derived from that State.

Section 9 gives right of way through military reservations, and requires the company to furnish suitable stations and accommodations for use of the government.

Section 11 reserves expressly full powers to compel compliance with the provisions of the bill in the most effectual manner possible. These restrictions and reservations are more comprehensive and explicit than are contained in any other railroad charter to our knowledge.

The whole section is as follows :

SEC. 11. Notwithstanding the rights and franchises herein granted to the Southern Pacific Railroad, Congress reserves the power to authorize the construction of other independent and competing lines of railroad and telegraph along or near the thirty-second parallel of north latitude, or any part thereof, from the westerly boundary of the State of Texas to San Diego, or other port on the Pacific coast in California, whenever the public good shall require, and especially whenever it shall be deemed necessary by Congress in order to secure or preserve to the country the benefit of a trans-continental and competing line between the Mississippi Valley and the Pacific Ocean along the said parallel.

And Congress hereby expressly reserves the same powers to regulate and control rates of transportation and telegraph charges, connections, and running arrangements, and all powers of every description over the existence, operation, and management of said Southern Pacific Railroad between the points above mentioned as were by law reserved over the Texas Pacific Railway Company by the United States, or which may be necessary for the public good ; and Congress, having just regard to vested rights, shall alter, amend, and repeal the charter thereof, and this act, as the public good shall require.

CAN AND WILL THE SOUTHERN PACIFIC COMPANY BUILD THE ROAD IF PERMITTED?

The Southern Pacific Railroad desires the land-grant through the Territories, but being notified that we are unwilling to support a less stringent bill, has declared its purpose to proceed to build the road as soon as it shall become a law. We are not willing to recommend the appropriation of either land or money to secure the construction of this road by the Southern Pacific Company, because its credit is unassailable, its bonds now selling at nearly par; and especially do we think it uncalled for, when an actual necessity, amounting to compulsion, exists that it should build the road and form those eastern connections which are essential to its continual life; *unless* Congress decides to give both land and money to secure what can be just as well had, with as much or more certainty of promoting the public-good, without public expense. Since our views were made public it has been charged that the Southern Pacific would never build the road under a charter so restrictive and stringent; that it could and would only use this legislation as an obstacle to others at the west just as the Texas and Pacific Company is used at the east end of the proposed route. But when the history and achievements of this corporation in the construction of seven hundred miles of far more difficult and expensive road in California *for the express purpose* of securing a southeasterly connection with the Gulf and Atlantic States, its present credit, and its corps of trained builders now idling away their time, its accumulations of materials awaiting this legislation, and the *necessity* that it must build or die before any other road is likely to reach it—when all these circumstances are fully considered by the House and by the country, we are confident that the declaration of those whose interests are in the direction of converting the public Treasury into a railroad subsidy-fund, that the Southern Pacific is not acting in good faith and will never build the road, is inspired only by the fear that if afforded the opportunity that corporation certainly will build it at once, and thus forever end these raids upon the Treasury in the interest of private associations under the pretense of promoting the public good.

CONCLUSION.

We submit that it will work great wrong to the Southern Pacific Railroad corporation, to the great South and Southwest, and to the whole country to reject this bill and to enact the bill recommended by the majority of the committee in the interest of the Texas and Pacific Company; or to reject this bill under any circumstances. This measure does not antagonize, nor did the Southern Pacific Railroad antagonize before us, any railroad project, branch, or connection east of the Rio Grande. It simply asks to build six hundred miles of railroad, half-way from the Colorado to Fort Worth, the present westerly terminus of the Texas and Pacific Company, and ninety additional miles in California, to complete the San Diego connection, without any public aid and subject to all reasonable restrictions in the public interest. True, it desires the land-grant, but we do not recommend it, because we believe that this corporation will build the road without.

Should the representatives of that portion of the country chiefly to be benefited, not by the subsidy but by the road, defeat this measure, it is difficult for us to see how they can reasonably expect the rest of the country to consent to burden the tax-payer and embarrass our policy with a most dangerous precedent, which would exhaust the Treasury with hundreds of subsidies throughout the unlimited future of the nation.

It would seem impossible for any man to justify himself to his constituency and to his country at large in a course which depletes the Treasury when all that is desired is attainable without expense to the people.

Profoundly desirous as we are for the speedy completion of this great enterprise, and believing that we recommend the only practicable or justifiable legislation upon the subject, we respectfully recommend the passage of this bill.

J. K. LUTTRELL.
G. M. LANDERS.
HENRY W. BLAIR.

We concur substantially in the conclusions of this report.

W. W. RICE.
ABRAM S. HEWITT.

BILL RECOMMENDED BY THE MINORITY OF THE COMMITTEE ON PACIFIC RAILROADS AS A SUBSTITUTE FOR H. R. 3391, WHICH IS REPORTED BY THE MAJORITY OF THE COMMITTEE AS A SUBSTITUTE FOR H. R. 1919, 1964, 2031, 2118, AND 2573.

A BILL to authorize the Southern Pacific Railroad Company to extend its railroad and telegraph line easterly from its present eastern terminus in Arizona to a point on the Rio Grande at or near El Paso, and for other purposes.

Whereas, by the act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, certain persons therein named, and their associates and successors, were thereby created a body politic and corporate in fact and in law, by the name, style, and title of the Texas Pacific Railroad Company; and

Whereas said corporation by said act was authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, from a point at or near Marshall, county of Harrison, State of Texas; thence, by the most direct and eligible route, to be determined by said company, near the thirty-second parallel of north latitude, to a point at or near El Paso; thence, by the most direct and eligible route, to be selected by said company, through New Mexico and Arizona, to a point on the Rio Colorado, at or near the southeastern boundary of the State of California; thence, by the most direct and eligible route, to San Diego, California, to ships' channel in the Bay of San Diego, in the State of California, pursuing in the location thereof, as near as may be, the thirty-second parallel of north latitude; and

Whereas, to aid said corporation in the construction of said railroad and telegraph line, there were granted to it a right of way through the public lands and certain sections of the public lands, and there were conferred upon it certain powers, rights, privileges, and immunities, as will more fully appear by referring to said act; and

Whereas said grants, powers, privileges, rights, and immunities were so granted and conferred upon said corporation upon certain conditions in said act specified, among which was one to the effect that said corporation should commence the construction of its road simultaneously at San Diego, in the State of California, and from a point at or near Marshall, in the State of Texas, and so prosecute the same as to have at least fifty consecutive miles of railroad from each of said points complete and in running order within two years after the passage of said act; and to so continue to construct each year thereafter a sufficient number of miles to secure the completion of the whole line from the aforesaid point on the eastern boundary of the State of Texas to the Bay of San Diego, in the State of California, as aforesaid, within ten years after the passage of said act; and that, upon failure to so complete it, Congress might adopt such measures as it might deem necessary and proper to secure its speedy completion; and

Whereas, by an act of Congress approved May second, eighteen hundred and seventy-two, supplementary to said act of March third, eighteen hundred and seventy-one, the name, style, and title of said company was changed to the Texas and Pacific Railway Company, and it was provided that said company should have, possess, and enjoy all the rights, privileges, and franchises theretofore conferred upon the Texas Pacific Railroad Company; and

Whereas it was provided, by said supplemental act of May second, eighteen hundred and seventy-two, "that the said Texas and Pacific Railway Company shall commence the construction of its road at or near Marshall, Texas, and proceed with its construction under the original act and this supplement, or in pursuance of the authority derived from any consolidation as aforesaid, westerly from a point near Marshall, and toward San Diego, in the State of California, on the line authorized by the original act, and so prosecute the same as to have at least one hundred consecutive miles of railroad from said point complete and in running order within two years after the passage of this act, and so continue to construct each year thereafter a sufficient number of miles, not less than one hundred, to secure the completion of the whole line, from the aforesaid point on the eastern boundary of the State of Texas, to the Bay of San Diego in the State of California, as aforesaid, within ten years after the passage of this act:" * * * "Provided, however, That the said company shall commence the construction of said road from San Diego eastward within one year from the passage of this act, and construct not less than ten miles before the expiration of the second year, and after the second year not less than twenty-five miles per annum, in continuous line, thereafter, between San Diego and the Colorado River, until the junction is formed with the line from the east at the latter point, or east thereof; and upon failure to so complete it, Congress may adopt such measures as it may deem necessary and proper to secure its speedy completion"; and

Whereas more than five years have elapsed since the passage of said act of March third, eighteen hundred and seventy-one, and the said supplement thereto, and the said Texas Pacific Railroad Company, now the Texas and Pacific Railway Company, has failed to prosecute the construction of its road as required in said act, and the supplement thereto, and professes to be unable to do so without further aid from the United States; and

Whereas, by the twenty-third section of said act of March third, eighteen hundred and seventy-one, above mentioned, for the purposes of connecting said Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company, a corporation organized under the laws of the State of California, was authorized to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to said Texas Pacific Railroad, at or near the Colorado River; and

Whereas the said Southern Pacific Railroad Company has in all respects complied with said act of Congress on its part, and has its said railroad constructed and now in operation from the point above mentioned, at or near Tehachapa Pass, by way of Los Angeles, to and across the Colorado River, into the Territory of Arizona, so as to give continuous railroad connection between the city of Yuma, on the easterly bank of said river, and San Francisco; and the Texas and Pacific Railway Company has failed to comply with the said acts of Congress, and has constructed its road only to Fort Worth, in the State of Texas, more than twelve hundred miles east of the Colorado River; and

Whereas said Southern Pacific Railroad Company proposes to extend and construct its road eastward from its present eastern terminus to the Rio Grande at or near El Paso, on or near the line of said Texas and Pacific Railroad, as described in said act, until it meets and connects with the constructed road of said Texas and Pacific Railway Company, or with some other railroad in the State of Texas, without any other or further aid from the United States than the grant of the right of way and franchises hereinafter provided, and to complete the same to the easterly

bank of the Rio Grande, the State of Texas not objecting, within six years after the passage of this act; and

Whereas it is of vital importance to the United States that said railroad should be completed as soon as practicable, that it may become available to the United States for the transportation of the mails, troops, munitions of war, supplies, and public stores, as provided in said act: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the corporation known as the Texas Pacific Railroad Company, created by the act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, and whose name was changed to the Texas and Pacific Railway Company by an act of Congress supplementary to said act, approved May second, eighteen hundred and seventy-two, has failed to comply with the conditions of said act and said supplementary act in relation to the construction of its road, and therefore the contingency provided for in said act and supplement, in view of which Congress reserved the right to adopt such measures as it might deem necessary and proper to secure the speedy completion of said railroad, has arisen.

SEC. 2. That the Southern Pacific Railroad Company, a corporation organized under the laws of the State of California (being the same corporation mentioned in the twenty-third section of said act of March third, eighteen hundred and seventy-one), is hereby authorized and empowered to extend, lay out, locate, construct, furnish, maintain, and enjoy its line of railroad and telegraph from its present eastern terminus, in the Territory of Arizona, eastward, along a more practicable route or line on or near the thirty-second parallel of north latitude to the easterly bank of the Rio Grande at or near El Paso, there to meet and connect with the constructed road and telegraph of said Texas and Pacific Railway Company, or with the constructed railroad and telegraph of some other company in the State of Texas; and that upon the passage of this act, all the grants of lands and other grants, rights, and privileges heretofore granted to and conferred upon the Texas Pacific Railroad Company or the Texas and Pacific Railway Company, on or pertaining to that part of its route west of the Rio Grande, which have been derived from the United States, shall be deemed to have lapsed and terminated as to said companies, and to be reverted in the United States, for the purposes of this act: *Provided*, That nothing in this act contained shall be construed to affect the grants heretofore made to the Texas and Pacific Railway Company east of the Rio Grande, or to impair the right of said company to continue the construction of its railroad and telegraph line westward from its present western terminus in the State of Texas in a continuous completed line to the Rio Grande, at or near El Paso, to a connection with the constructed railroad and telegraph of said Southern Pacific Railroad Company at that point, and to complete its line to El Paso within six years, provided that it is not sooner met by the Southern Pacific in Texas.

SEC. 3. That the right of way through the public lands and through the same lands formerly granted to the Texas and Pacific Railway Company be, and the same hereby is granted to said company for the construction of said railroad and telegraph line; and the right, power, and authority are hereby given to said company to take, from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof; said right of way is granted

to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands, and not exceeding in the aggregate more than one section for every five miles of road, for stations, buildings, workshops, switches, side-tracks, turntables, water-stations and other purposes. The United States shall extinguish as rapidly as may be the Indian titles to all the lands falling under the operation of this act, and required for the said right of way and grants herein made.

SEC. 4. That said Southern Pacific Railroad Company, its successors or assigns, shall commence work upon the extension of its road, as provided in the second section of this act, within one year after the passage of this act, and shall complete one hundred miles within one year thereafter, and not less than fifty miles per year until the same shall have been fully completed and equipped to the Rio Grande, and shall also extend its line to San Diego, the whole to be completed within six years after the passage of this act. And upon failure so to complete each year as in this section provided, Congress may immediately take any measures it may deem necessary for the completion of the road. And in case the Texas and Pacific Railway Company, or any other company authorized by the laws of the State of Texas to construct a railroad to the Rio Grande at or near El Paso, shall not have completed its railroad and telegraph line to that point at the expiration of said six years, and said point shall have been reached by the constructed road and telegraph of the Southern Pacific Railroad Company, said last-named company may continue its railroad and telegraph eastwardly, with the consent of the State of Texas, until it shall meet and connect with the constructed railroad and telegraph of such other company; and if said Southern Pacific Railroad Company shall have failed to complete its road and telegraph line to the Rio Grande, at or near El Paso, at the expiration of six years, as above provided, then and in that case said Texas and Pacific Railway Company, or other railroad company organized under the laws of Texas as aforesaid, whichever shall have first reached that point, when its railroad and telegraph shall have been completed, may continue the construction of its said railroad and telegraph westwardly until it shall meet and connect with the constructed railroad and telegraph of the Southern Pacific Railroad Company; and for the part it shall so construct it shall have all the grants, rights, and privileges which by this act are conferred upon said Southern Pacific Railroad Company.

SEC. 5. That said Southern Pacific Railroad Company, for the purpose of completing its said railroad, shall have the right to bridge, with proper draw-bridges to accommodate commerce, such navigable streams as its road may cross; and when the railroad and telegraph shall be completed to a connection with the Texas Pacific Railroad, or other roads, as above provided, the whole line of said railroad and telegraph so connected from its easterly terminus in Arizona, or easterly thereof to San Pedro and ports on the Pacific Ocean southerly thereof, including San Diego, shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one connected, continuous line; and said lines of railroad shall be put on an equality as to all consigned through business passing either way; and no unjust discrimination in charges for freight or passengers shall be made by or against either, but the same charges per mile for passengers and per ton per mile for freight shall be made for the haul to and from the junction of such lines as shall be charged on similar business from such junction on its own line; and all freight and passengers shall be forwarded in either direction as consigned; and

except as to the ownership and general management of such connecting roads, and the division of earnings, said roads shall be operated so as to practically form one line, and secure to each railroad company and to the public the accommodation and advantages of a through line at all points of junction; and each company so connecting with the Southern Pacific Railroad shall have the right to contract currently for the transportation of freights and passengers destined to, or shipped from, its road to or from any point on the road of the Southern Pacific Railroad Company, at the then established rates of freight and fare, and may issue through bills of lading and passenger-tickets, and may maintain agencies on the line or at the termini of the road of the other for said purposes, and shall be afforded privileges and facilities for transacting such business at such points equal to those enjoyed by the company owning such road: *Provided*, That such connecting road or roads shall reciprocate said right of connection and equality of charges and privileges, and shall extend like facilities to other companies desiring to connect with the Southern Pacific Railroad; and if any company claiming the privileges of this act that shall fail or refuse to comply, in letter and in spirit, with the provisions of this or any other section of this act, the circuit court of the United States may, at the instance of the company, or of any person or persons aggrieved thereby, compel compliance by injunction, mandamus, or otherwise; and in order to secure jurisdiction by the Federal courts over suits to which such companies may become parties, each company shall be suable in the district and State in which its last annual meeting was held or where its principal local office may be, or in any district through which its road may be built.

Fair and reasonable rates for the carriage of through freight and passengers shall be agreed upon from time to time between the Southern Pacific Railroad Company and connecting companies, which shall not at any time exceed the rates charged by competitive Pacific railroad lines for similar business; but Congress shall at all times have the right to regulate rates for the transportation of such freight and passengers, and for postal and telegraphic service, over the entire line of the Southern Pacific Railroad Company, from the easterly end of the line in Arizona, or east thereof, to San Pedro and ports southerly thereof, and over the entire lines of other connecting companies claiming privileges under the provisions of this act, and may exercise a general supervision and control, so far as it shall be necessary so to do, in the interest of the Government of the United States, to secure prompt transportation for its own wants and for the public.

SEC. 6. That the line of road constructed under the provisions of this act shall be maintained and operated by said company as an open highway, so far as is reasonable, and as a postal and military route for government purposes, at fair and reasonable rates of compensation for government service, to be agreed upon and adjusted by the Secretary of War, the Postmaster-General, or the Secretary of the Interior, for their respective departments, in conjunction with the proper officers of the road, not exceeding the amounts paid by private parties for similar services, the government at all times to have the preference in the use of the road and its facilities for the purposes aforesaid; and for the purpose of completing the same, said company shall have the right to bridge such navigable streams as its lines may cross, the plans of said bridges to be submitted to, and be approved by, the President of the United States or the Secretary of War; and all roads now or hereafter constructed under authority granted by the United States or by any

State traversed by the lines of said road, to intersect at any point with said lines of railway, shall have the right so to do.

SEC. 7. That nothing in this act contained shall be construed as in any manner impairing the obligations, if any, assumed by the Texas and Pacific Railway Company, under the laws of the State of California, or as enlarging or diminishing any power, privileges, property, and franchises granted or acquired, if any, under the laws of said State.

SEC. 8. That the said Southern Pacific Railroad Company, or any connecting company accepting the provisions, or availing itself of the privileges, of this act, shall render forfeitable, at the will of the United States, all rights hereunder if at any time they shall enter into any combination, agreement, or contract with any thorough transcontinental line now in existence, or that may hereafter be constructed, for the transportation of through freight over the railroad herein authorized; and a board of government commissioners, not more than three in number, shall be appointed by the President of the United States when he shall deem it necessary, who shall have power to examine the books of said Southern Pacific Railroad Company, when directed so to do by him, and of all connecting companies claiming privileges under the provisions of this act, and also to examine persons under oath, in order to ascertain the existence of such combination, agreement, or contract; and in the event of said commissioners reporting to the President of the United States any violation of the provisions of this section by any company, it shall be the duty of the Attorney-General of the United States to institute proceedings for the forfeiture of its charter in any circuit court of the United States for the circuit through which the said roads, or either of them may pass, with the right of appeal by either party to the Supreme Court of the United States, who shall determine the case as justice and equity shall require: *Provided*, That nothing in this section shall be construed to prevent any company from arranging for the transportation of passengers or freight to and from points on its own line, and points on or beyond the line of any connecting company or companies, subject to the laws of the State or States in which such connecting company may be located.

SEC. 9. That to facilitate all government transportation, and to relieve the company herein authorized to construct its line of railway to the Pacific coast from embarrassment, the right of way through the military reservations of the United States, together with sufficient ground for depots and station-houses, is hereby granted to the Southern Pacific Railroad Company: *Provided*, That said company shall establish and maintain stations at such points in said reservations as may be most convenient to receive and deliver the government business.

SEC. 10. That the acceptance of the terms, conditions, restrictions, and impositions of this act by said Southern Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within six months after the passage of this act, and not afterward, and shall be deposited in the office of the Secretary of the Interior.

SEC. 11. Notwithstanding the rights and franchises herein granted to the Southern Pacific Railroad, Congress reserves the power to authorize the construction of other independent and competing lines of railroad and telegraph along or near the thirty-second parallel of north latitude, or any part thereof, from the westerly boundary of the State of Texas to San Diego, or other port on the Pacific coast in California, whenever the public good shall require, and especially whenever it shall be deemed

necessary by Congress in order to secure or preserve to the country the benefit of a transcontinental and competing line between the Mississippi Valley and the Pacific Ocean along the said parallel.

And Congress hereby expressly reserves the same powers to regulate and control rates of transportation and telegraph charges, connections, and running arrangements, and all powers of every description over the existence, operation, and management of said Southern Pacific Railroad between the points above mentioned as were by law reserved over the Texas Pacific Railway Company by the United States, or which may be necessary for the public good; and Congress, having just regard to vested rights, shall alter, amend, and repeal the charter thereof, and this act, as the public good shall require.



THE TEXAS AND PACIFIC RAILROAD.

MARCH 13, 1878.—Recommitted to the Committee on the Pacific Railroad and ordered to be printed.

Mr. LUTTRELL submitted the following as the

VIEWS OF THE MINORITY:

[To accompany bills H. R. 1919, 2118, 1964, 2031, and 2573.]

The undersigned, of the subcommittee to whom were referred House bills Nos. 1919, 2118, 1964, 2031, and 2573, report that we have had the same under consideration, and while differing with the majority, we are as sensible to the advantages to follow the speedy completion of the thirty-second parallel Pacific railroad, in the way of encouragement to trade, manufactures, and mining throughout the country; in the development of the population and industries of the southwest territory; in the military protection of our frontier, and in the economies to the administration of the government, as the majority of its members can be, and areas desirous to promote that object. We differ only as to the means to be employed.

Two propositions are before us looking to that end. One of them, the Texas and Pacific, seeks to retain its land-grant from the United States, amounting to 18,000,000 acres, to obtain two years' additional time, and a special and extraordinary grant of the credit of the nation in the form of an indorsement upon \$38,750,000 of the company's bonds, pledging it to the payment of 5 per cent. gold interest for fifty years.

The other, the Southern Pacific, asks only our sanction to continue its road eastward across the Territories within the same time, but without any other or further assistance than the contiguous grant of lands now at the disposal of Congress.

Which of these two propositions, as guardians of the public interests, can we adopt? Which of these two candidates, as practical business men, ought we to intrust with this undertaking? We should select the proposition most favorable to the good of the people. It would seem that by the charter the grant of land along this thirty-second parallel line in the Territories was made double that of the pioneer line by the forty-first parallel as in lieu of future aid in money or credit. This purpose again appears in the amendment of 1872, which further lightened the burdens and enlarged the privileges of the Texas and Pacific Company, and which were granted upon the express condition—

That nothing in this act shall be so construed as to authorize the grant of additional lands or subsidy, of any nature or kind whatsoever, on the government of the United States.

Both the act and its amendments required as a condition-precedent that the work should be prosecuted simultaneously from the eastern and western termini. By the act of 1872 there were required to be completed not less than 500 miles on the main line in Texas, and not less than 110 miles in California, by May 2, 1878; whereas in fact less than 200 miles of the main line have been completed westerly from the Mar-

shall terminus in Texas, and not one mile, or even a foot, from San Diego easterly. There has been a marked failure on the part of the company to comply with the terms on which the lands and franchises were granted. This contingency of failure was, by the caution of Congress, foreseen and provided for in both acts, by a proviso that—

Upon failure to so complete it Congress may adopt such measures as it may deem necessary and proper to secure its speedy completion.

The fact of such failure is obvious by its appearance here for further aid and indulgence, and it thereby confesses inability to proceed with the construction and to make good its delinquencies.

By the same act of charter the Southern Pacific was authorized to construct some 350 miles of road in California to connect this 32d parallel road with one previously authorized, extending to San Francisco, at the rate of 50 miles per annum. It appears, by the record, that it has completed that portion within the seven years allotted, notwithstanding the great physical obstructions and the hardness of the times, and has over 700 miles of road in operation with branch-roads and termini at seaports in Southern California, in sail communication with San Francisco, while its eastern terminus is on the east bank of the Rio Colorado, in Arizona.

In this attitude of affairs it represents that it would be a great hardship to be compelled to wait indefinitely upon a disabled company for a connecting road from the East, and asks of us the privilege of continuing its road eastward through the Territories to the Rio Grande, and as much further as may be necessary to meet the Texas roads, within six years. Such is the desire for an outlet to the East, which shall admit it to participation in through overland traffic that it appears that if its request be granted to construct a line to San Diego Harbor in addition to its present ocean terminus, and to prorate on through business with all eastern connections to San Francisco, or other points, and to allow Congress to impose the rates and fares on the line between its eastern and western termini at Pacific ports, although asking no aid of the United States which it is not its advantage for Congress to grant, this is rather more than it is within the power of the other company to offer. No good and satisfactory reason is found why this proposition should not be promptly and cheerfully accepted.

Were we administering our own private business, could we for a moment hesitate between these offers, one of which besides being an undeserved favor, involves grave responsibilities, dangerous precedent, and great risks, while the other avoids all commitments, all doubtful policy, and insures all its proffered benefits within the same time, without the risk of a dollar of the people's money or credit? We conceive we are not here as the almoners of the bounty of the government, or its citizens, or corporations, but as guardians of the public welfare and trustees of its property, and credit of the nation, sworn to obey the Constitution and protect the best interests of the people, and in this view we cannot concur in the report of the majority, which proposes to grant a subsidy or guarantee of \$38,750,000 of the people's money or credit to a corporation. We are opposed to granting government aid in money, bonds, lands, or public credit to any corporation, but of the two propositions before us, we prefer the one that will save to the government and the tax-paying people nearly \$40,000,000.

J. K. LUTTRELL.

I concur substantially in this report.

HENRY W. BLAIR.

THE TEXAS AND PACIFIC RAILROAD.

MARCH 13, 1878.—Recommitted to the Committee on the Pacific Railroad and ordered to be printed.

Mr. MORRISON, from the Committee on the Pacific Railroad, submitted the following as the

VIEWS OF A MINORITY:

[To accompany bill H. R. 3391.]

The Texas and Pacific Railroad Company seek to obtain the guarantee of the United States for the payment of the interest on thirty-eight million seven hundred and fifty thousand dollars of fifty-year five per cent. bonds, to be issued by said railroad company, and used by it in building and extending its railroad from Fort Worth, in Texas, to the Pacific Ocean at San Diego, in California. The road to be constructed is 1,400 miles in length; the bonds to be issued amount to \$27,678 per mile; and the interest guaranteed to be paid by the United States, used as a sinking-fund and invested in government bonds bearing the same rate of interest, would pay \$300,000,000 of the public debt.

Has Congress the power to authorize the coveted guarantee? If it has, then power has been conferred upon Congress to make gifts of the public moneys and public property to private corporations and individuals. Has any such power been granted by the Constitution, or is it necessary to the execution of any power that is granted?

This railroad, when built, will be the private property of the shareholders. It will be a military and post road, in the same sense, and to the same extent, and none other, that all other railroads of the country over which the government may transport its mails, troops, or supplies, for reasonable compensation, are military and post roads. It is submitted that the power has not been conferred upon Congress to make the United States a partner in such an enterprise by subscription to its capital stock; or more, to authorize the construction of the road out of the resources of the people to be made a gift to the railroad company.

The attempt to derive such power, the power to build and give away a railroad, from the power to *establish* military and post roads, is, in the opinion of the undersigned, an attempt to pervert the obvious purpose of a power intended for the public good to private ends. The United States are bound to provide for the general defense, but it does not follow that they may construct or operate a railroad for the exclusive benefit of a private corporation, because they may ultimately and in some possible contingency want to use it for a military purpose, any more than they may go into partnership with a stock-raiser because horses are necessary in war. The United States have power to regulate foreign commerce and commerce between the States, but it does not follow that they may indorse the notes of a ship-builder or merchant by way of stimulating and encouraging business. The undersigned is

unable to perceive any distinction in principle between these cases and the demand of the projectors of this railroad for a loan of the government credit to the extent of many millions, with which to prosecute a private speculation.

President Jackson, in his veto message of the Maysville road bill, discussed the power in question and denied the right of Congress in the premises without a previous amendment to the Constitution granting the power, which, in his opinion, was clearly reserved by the instrument as it stood and now stands in respect to this power. President Polk held the same views, and devoted a large part of his last annual message to this grave question, then just beginning to assume dangerous proportions. The weight of authority in favor of the views of Presidents Jackson and Polk is overwhelming. Among the statesmen of the earlier days of the republic there was little or no difference of opinion. I content myself with the naked statement of the historical truth, and will not burden these pages with the bright array of names, from Jefferson down, which might be brought to its support.

The railway company which asks for this enormous appropriation of credit presents no claim upon the public which entitles it to exemption from the general rule. The enterprise is essentially a private one, and the company has already received from the United States and the State of Texas a sufficient basis of credit to have built the road had its assets been prudently managed.

The undersigned is not unmindful of the fact that at a later period a different rule of construction prevailed from that which prevailed in the earlier days of the Republic and which is now here insisted upon.

Undelegated power is necessarily unregulated and unrestrained. Power usurped never was and never will be honestly administered.

When we passed the limits of constitutional power we invited venality, corruption, and all the perils of corporate greed with which the country under the later construction has become unhappily familiar. First, as if by stealth and indirection, gifts and grants of the public property were made through the States; then directly to private corporations; and finally, under the necessities, real or supposed, of civil war, subsidies assumed the objectionable form proposed in the pending bill.

The undersigned would remind the House that this later rule of construction only obtained a footing at a period when American statesmanship had grown restive under constitutional restraints, which are still believed to be essential and indispensable to the protection and well-being of the people; and when rules of construction obtained a footing which finally wrecked us in civil war, we should retrace our steps and return to the doctrines and the practices of the fathers. In this the people have preceded us, and this House has, by solemn resolution, condemned the further grant or renewal of subsidies in any form. The lands granted already exceed two hundred millions of acres, a quantity in area and acres equal to the seven great States of Ohio, Kentucky, Tennessee, Indiana, Illinois, Wisconsin, and Iowa, equal to the original thirteen States if we exclude West Virginia. The money-subsidies already granted, guaranteed, loaned, or given, which in Pacific railroad legislation have hitherto proved to be equivalent terms, used as a sinking-fund, would liquidate more than \$380,000,000 of the public debt.

The property out of which this 1,400 miles of railway, to be owned by private individuals, is to be constructed is wholly the creature of the government. The shareholders contribute no part of it under the provisions of this bill. If this road is a matter of sufficient national

concern to be built by the government, it is submitted that the government, and not the railroad company, should own it. The present value of the \$38,750,000 of fifty-year bonds, were the principal also guaranteed by the government, would not exceed \$3,000,000. In their proposed form, were the interest-guarantee of the government detached, the bonds would be absolutely worthless.

The 444 miles of constructed road is not included in the proposed mortgage to indemnify the government for its guarantee. The land-grant of the State of Texas, which constituted the most valuable of the securities heretofore offered by the Texas and Pacific Railroad Company to the government as indemnity for its guarantee, has lapsed, and is not included in the proposed mortgage for indemnity under this bill. The lands heretofore granted to the company by Congress, situate in the Territories of New Mexico and Arizona and the State of California, are believed to afford the government no substantial indemnity for its guarantee; the area of tillable or available agricultural lands is inconsiderable—the whole proceeds are liable to be consumed in their survey and sale. If railroad history repeats itself, the bondholders will foreclose any claim of the government when the bonds are payable. The only real indemnity, therefore, which the government obtains for its guarantee is found in its right to retain the price and cost of carrying its mails, troops, and supplies over, not the Texas and Pacific Railroad, but over that part of it to be built upon its (the government's) own credit. The local or way carrying on the road to be constructed west of Fort Worth to be paid for by the government must long be inconsiderable, while through carrying will be divided between this and other roads and branches.

The history of Pacific Railroad legislation and the practices under it does not justify the expectation of net earnings which will inure to the benefit of the government in compensation for its guarantee or otherwise. That the road might be so constructed and so operated as in a considerable degree to save the government harmless in its guarantee is possible; that it will not be so constructed or operated, our experience abundantly proves. We have fostered by lavish grants from the public treasury a number of corporations, which, in return for our ill-considered bounty, have oppressed the people and grown so strong as to defy the government, or so rich as to corrupt its officers. The proof is abundant that Congress itself has failed to withstand the corrupting influences of the great corporations it has created. There is nothing in the history of the Texas and Pacific Railroad Company which justifies the conclusion that its methods and practices will be different from the methods and practices of its predecessors.

The undersigned is not unmindful of the commercial importance and special advantages of the proposed road as a transcontinental railway, and concurs in the belief expressed by the majority of the committee that, "but for our unfortunate civil disturbances, there can be little doubt that the first transcontinental line of railway constructed would have been on or near the 32d parallel." But it is submitted that this belief affords no sufficient justification for the guarantee and subsidy asked. For were it conceded, as it is not, that this enterprise is essentially of the Southern character with which it is attempted to be stamped, no reason can be built upon that fact which may not be urged with equal force as a reason why the government should equalize between the lately contending sections all the losses resulting from "our unfortunate civil disturbances."

The statement of the majority that the Government of the United

States, in view of the quantity of lands given to it by Southern States, has been unjust to the South in the bestowal of bounties, is believed to find its refutation in the character of the men who before the war represented that section. They were too sensitive as to the rights of their section to be satisfied with less than what was rightfully theirs. The undersigned is not advised as to how the Texas and Pacific Railroad Company acquired the franchise and right of way by which it is authorized to construct its railroad from Fort Worth to El Paso in the State of Texas, whether by grant from the State of Texas, or by purchase from or consolidation with the Memphis, El Paso and Pacific Railroad Company, under the fourth section of the act of March 3, 1871, entitled, "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road and for other purposes."

In the case of *Davis vs. Gray*, 16 Wallace, page 203, United States Supreme Court decided that the Memphis, El Paso and Pacific was a surviving corporation, with all its property in possession, and all its faculties unimpaired. This franchise and right of way the company proposes to mortgage to indemnify the government for its guarantee. It becomes a material fact, therefore, to know if it was ever acquired in either of the modes suggested, or otherwise, and whether it has been forfeited or lost with the Texas land-grant. The undersigned expresses no opinion upon this question, which was not considered by the committee, but submits that due regard for the interests of the government demands that before any guarantee is made, based in part on a mortgage of the said franchise and right of way, the House should be informed and advised as to the title to what is proposed to be mortgaged.

Respectfully submitted.

WM. R. MORRISON.